REMARKS

In view of the preceding amendments and the comments which follow, and pursuant to 37 CFR §1.111, amendment and reconsideration of the Official Action of September 27, 2004 is respectfully requested by Applicant.

A "Claims Listing" dated 3/17/05 and a "Specification Marked to Show Changes" are submitted herewith.

A copy of Applicant's express abandonment of U.S. Serial No. 10/087,612, which was filed on March 14, 2005, is attached hereto.

The specification has been amended to comply with the Examiner's requirements for a new title. The serial number of the application referred to on page 1 has been inserted.

Claims 1, 14, 15, 19, 34, 42, 45, and 48 have been amended. Support for "trifluoroacetyl" added to claims 14 and 15 is found on page 13, lines 11 and 28 of the originally filed application. Support for the recitation "a label which is detectable upon binding of the antibody to the analyte" added to claims 42, 45, and 48 is found in the originally filed specification on page 21, lines 24-32. No new matter has been added.

Claims1-42, 45, and 48 remain pending for examination.

Amendment to title

The examiner has required that the title of the application be changed to adequately reflect that the invention relates to the analysis of ecstasy-type drugs. This has been done by way of the present amendment, and the examiner's reconsideration is respectfully requested.

Double patenting rejections

Claims 17, 18, 31, and 42-44 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16, 28, and 40-42 of copending application no. 10/087,612.

A Notice of Express Abandonment of copending application no. 10/087,612 was filed by Applicant on March 14, 2005, a copy of which has been appended hereto. Thus this provisional rejection for double patenting is avoided.

Claims 17, 18, and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-9 of copending application no. 10/622,254.

Applicant hereby informs the examiner that claims 7-9 of application no. 10/622,254 have been cancelled from that application. They are now pending in an application filed on March 9, 2005 that is a divisional of serial no. 10/622,254. In the event any pending claims are still in conflict at the time of patenting of either instant claims 17, 18, and/or 31 in the instant application or claims 7-9 in the before-mentioned divisional application, a terminal disclaimer will be filed by Applicant as appropriate.

Claims 17, 18, 31, and 42-44 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15, 16, 26, and 33-35 of copending application no. 10/622,524.

Applicant responds that, in the event any pending claims are still in conflict at the time of patenting of either instant claims 17, 18, 31, and/or 42-44 in the instant application or claims 15, 16, 26, and 33-35 of copending application no. 10/622,524, a terminal disclaimer will be filed by Applicant as appropriate.

Rejection under 35 USC §112, second paragraph

Claims 1, 14, 15, and 42-50 have been rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The examiner points out that the proviso of claim 1 appears to include definitions of R_1 which are not contained in the earlier appearing definition of R_1 defined as –J–M–T–. Applicant agrees with the examiner and has amended the proviso of claim 1 to eliminate the conflicting definitions from the proviso.

The examiner points out that claims 14 and 15 are indefinite in not defining the term "TFA" which does not appear in the specification.

Claims 14 and 15 have been amended to recite "trifluoroacetyl" instead of "TFA". "Trifluoroacetyl" is disclosed in the specification on page 8, line 28, and page 13, line 11, for example. "TFAA" is defined in the specification on page 10, line 16.

The examiner argues that claims 42, 45, and 48 are indefinite in not reciting the type/structure of the analyte to be detected. Additionally, the claims are indefinite and incomplete for failing to define how the "adduct formed by the antibody and the analyte" is to be detected.

Applicant has amended claims 42, 45, and 48 to recite "an ecstasy drug or an ecstasy drug derivative analyte". These claims have also been amended to recite "a label which is detectable upon binding of the antibody to the analyte".

The examiner's reconsideration of the rejections under 35 USC §112, second paragraph, is respectfully requested.

Rejection under 35 USC §102 (b)

Claims 1-30 and 34-50 have been rejected under 35 USC §102 (b) as being anticipated by Brynes et al., U.S. Patent No. 5,101,015 (hereinafter "Brynes"). The Examiner argues that Brynes describes activated methylenedioxy (meth)amphetamine haptens containing a linker between the functional group and the hapten, immunogenic conjugates prepared from the activated haptens, antibodies prepared from the immunogens, and the use of the antibodies in an immunoassay. These descriptions anticipate the activated linker-haptens, immunogens, antibodies, and immunoassays of the instant claims. See Brynes at column 7, line 8 to column 8, line 41. For the activated linker-haptens of instant claims 1 and 4-11 wherein M is –CO-, J is alkylene, and the amine group is protected, see Brynes column 7, lines 33-34 wherein M includes alkylene, W is carbnoxyl, and the amine is protected (column 8, lines 21-32); see also the structure of column 7, line 60. The specific methylene dioxy (meth)amphetamine haptens MDA and MDEA of the instant claims are described by Brynes at column 4, lines 3-4. The immunogenic carriers of instant claim 12 are described at column 5, lines 11-32 of Brynes.

Applicants respectfully disagree with the examiner and point out that all structures taught by Brynes lack the fused ring system of the present invention and therefore cannot anticipate the present invention. Furthermore, the structures taught by Brynes do not make the present invention obvious because Brynes contains no teaching that would lead to the ecstasy derivatives of the present invention. Brynes teaches an amine substitution; however, it does not follow that an amine group can thus be substituted in any other drug.

The examiners reconsideration of the rejection under 35 USC §102 (b) is respectfully requested by Applicant.

Rejection under 35 USC §103 (a)

Claims 31-33 have been rejected under 35 USC §103 (a) as being unpatentable over Brynes et al., U.S. Patent No. 5,101,015 (hereinafter "Brynes"). The Examiner has applied Brynes for the reasons stated in the 35 USC 102(b) rejection above and argues that the packaging of reagents in kit form is an obvious expedient for ease and convenience in assay performance.

Applicant argues that claims 31-33 depend from claims 17, 19, and 27 whose patentability over Brynes has been argued above in the rejection under 35 USC §102 (b), and therefore, claims 31-33 should enjoy the same patentability as claims 17, 19, and 27.

Applicant respectfully requests the examiner's reconsideration of the rejection under 35 USC §103 (a).

Applicant submits that his application is now in condition for allowance, and favorable reconsideration of their application in light of the above amendments and remarks is respectfully requested. Allowance of claims 44-52 at an early date is earnestly solicited.

The Examiner is hereby authorized to charge any fees associated with this Amendment to Deposit Account No. 02-2958. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

Marilyn Amick

Marilyn L. Amick
Reg. No. 30,444

Customer No. 23690
Phone: 317-521-7561
Fax: 317-521-2883

Rejection under 35 USC §103 (a)

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Applicant argues that claims 31-33 depend from claims 17, 19, and 27 whose patentability over Brynes has been argued above in the rejection under 35 USC §102 (b), and therefore, claims 31-33 should enjoy the same patentability as claims 17, 19, and 27.

Applicant respectfully requests the examiner's reconsideration of the rejection under 35 USC §103 (a).

Applicant submits that his application is now in condition for allowance, and favorable reconsideration of their application in light of the above amendments and remarks is respectfully requested. Allowance of claims 44-52 at an early date is earnestly solicited.

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